

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re PLUG POWER INC. SECURITIES
LITIGATION

Case No. 1:23-cv-00409 (JLH)

RESPONSE TO NOTICE OF SUBSEQUENT AUTHORITY

Plug Power Inc. and the individual defendants, Andrew Marsh, Paul B. Middleton, and Sanjay Shrestha, respectfully submit this response to plaintiffs’ notice of subsequent authority dated August 8, 2025. D.I. 79. Contrary to plaintiffs’ assertions, the decision that was the subject of plaintiffs’ notice, *Hawkins v. Danaher Corp.*, 2025 WL 2216149 (D.D.C. Aug. 4, 2025), further supports dismissal of the second amended complaint in this case.

Plaintiffs assert that the court in *Danaher* “denied in relevant part” a motion to dismiss securities fraud claims. Notice at 1. In reality, the *Danaher* court granted the motion and dismissed all of the claims that were based on forward-looking statements except one. *Danaher*, 2025 WL 2216149 at *7-8. The one exception was for alleged revenue projections discussed by a senior officer during an earnings call. According to “specific facts” alleged in the complaint, the speaker “knew about projections that would not go over well with investors, so he ‘made up’ new projections that ‘looked better.’” *Id.* at *8. The fabricated projections he discussed on the call allegedly “ignored that demand” for some products had “already tapered by the start of the class period” and other pressures were emerging. *Id.* Based on the allegedly fabricated projections, the court concluded that the complaint sufficiently alleged “actual knowledge” to avoid application of the PSLRA safe harbor and that cautionary language was not “meaningful.” *Id.*

There are no similar allegations in the second amended complaint. In this case, moreover, plaintiffs admit that when Plug Power encountered headwinds during the class period, it expressly

updated its forecasts instead of “[making] up” news ones that “looked better.” The district court’s decision in *Danaher* offers no assistance to plaintiffs here.

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Respectfully submitted,

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